

Remarks

The Office Action mailed May 3, 2006 has been carefully reviewed and the following remarks been made in consequence thereof.

Claims 1-26, 34, 36-45, 47-50 and 57 are pending in this application. Claims 1-26, 34, 36-45, 47-50 and 57 stand rejected. Claims 27-33, 35, 46 and 51-56 were previously cancelled.

The rejection of Claims 1-57 under 35 U.S.C. § 103(a) as being unpatentable over Tilton (U.S. Patent No. 6,654,727) is respectfully traversed.

Applicants respectfully submit that Tilton does not describe or suggest the claimed invention. As discussed below, at least one of the differences between the cited reference and the present invention is that Tilton does not describe or suggest a method for analyzing a deal that includes generating a cash flow data table from various data sources wherein the data table includes data relating to each asset included within the portfolios, importing cash flow data from the data table into a cash flow model, and *automatically segmenting cash flow data by potential asset disposition types utilizing the cash flow model wherein each asset has a potential asset disposition type assigned thereto*. (Emphasis added.)

Moreover, Tilton does not describe or suggest a method that includes determining a cash flow timing and an expense timing for each asset included within the portfolios based on the potential asset disposition type assigned thereto, determining cash flow projections for the deal based on the determination of cash flow timings and expense timings for each asset included within the portfolios, and *performing sensitivity analysis using a Monte Carlo Simulation Model to provide different scenarios based on a variety of assumptions retrieved from the database including expected timing of recoveries, amount of recoveries, interest rates, and expenses wherein the Simulation Model generates a probabilistic distribution of a possible value of the deal including risk associated with uncertainty of future events*. (Emphasis added.)

Furthermore, Tilton does not describe or suggest a method that includes *exporting cash flow projections into a pre-determined format to develop financially attractive bids for the deal that takes into account a variety of foreseeable risks*. (Emphasis added.)

Tilton describes a platform and a securitization methodology that provides lenders with an opportunity to “maximize the returns on their distressed commercial credit facilities and overcomes the obstacles that have historically precluded the securitization of distressed commercial loans.” (See Abstract.) The Tilton invention is based upon an underlying portfolio of at least 30% (and up to 100%) distressed commercial credit facilities for securitization that emulates the predictability and regularity of the cash flow and recovery characteristics of a portfolio of performing credit facilities. The methodology of the Tilton invention takes a specified mix of distinct classifications of distressed credit facilities with specified characteristics in confluence with structural specifications for an SPE (special purpose entity), such as specific reserves and safeguards, to create a synthetic asset class that emulates the cash flow and recovery characteristics of an SPE containing a portfolio (which may be of dissimilar size) of performing credit facilities. As such, the portfolio of distressed credit facilities is amenable to securitization and the issuance of asset-backed debt securities (above any equity or equity-like tranche or tranches of securities issued by the SPE) all of which are eligible to receive investment grade ratings.

Tilton provides the following example of its invention in practice: an SPE purchases a portfolio of at least 30% (and up to 100%) of distressed commercial credit facilities from a lender for an aggregate purchase price comprised of (i) a cash purchase price comparable to what the lender would have received in a bulk sale into the marketplace, or realized on a net, discounted cash flow basis if the lender had retained the distressed credit facility portfolio and utilized its internal workout effort, and (ii) an additional investment grade asset or assets with a value on the date of purchase, for example, in the range of 10-15% of the face amount of the aggregate funded amounts included in the distressed credit facility portfolio. The Tilton invention allows the lender to replace the distressed commercial credit facilities on its balance sheet with cash and investment grade assets with an aggregate value likely to be substantially

greater than the amount the lender otherwise would have received in a "straight sale" for cash to a distressed asset investor or other third party. Furthermore, the methodology of the Tilton invention also allows a lender to remove distressed commercial credit facilities from its balance sheet with the opportunity of receiving economic benefits likely greater than would be realized on a net discounted cash flow basis through internal workout efforts by the lender if the lender had retained the distressed assets.

Claim 1 recites a method for analyzing a deal that includes portfolios of distressed financial assets including loans or other financial instruments, the method uses a network-based system including a server system coupled to a centralized database and at least one client system, the method includes the steps of "generating a cash flow data table from various data sources, the data table including data relating to each asset included within the portfolios...importing cash flow data from the data table into a cash flow model...automatically segmenting cash flow data by potential asset disposition types utilizing the cash flow model, each asset having a potential asset disposition type assigned thereto...determining a cash flow timing and an expense timing for each asset included within the portfolios based on the potential asset disposition type assigned thereto, the determination of the timings performed using the cash flow model...determining cash flow projections for the deal based on the determination of cash flow timings and expense timings for each asset included within the portfolios...performing sensitivity analysis using a Monte Carlo Simulation Model to provide different scenarios based on a variety of assumptions retrieved from the database including expected timing of recoveries, amount of recoveries, interest rates, and expenses, the Simulation Model generates a probabilistic distribution of a possible value of the deal including risk associated with uncertainty of future events...and exporting cash flow projections into a pre-determined format to develop financially attractive bids for the deal that takes into account a variety of foreseeable risks."

Tilton does not describe or suggest the method recited in Claim 1. More specifically, Tilton does not describe or suggest a method for analyzing a deal that includes generating a cash flow data table from various data sources wherein the data table includes data relating to each asset included within the portfolios, importing cash flow data from the data table into a cash flow

model, and *automatically segmenting cash flow data by potential asset disposition types utilizing the cash flow model wherein each asset has a potential asset disposition type assigned thereto.* (Emphasis added.)

Notably, Tilton does not describe or suggest automatically segmenting cash flow data by potential asset disposition types wherein each asset has a potential asset disposition type assigned thereto. The Office Action, at page 4, asserts that Tilton teaches this element at Col. 11, lines 45-67, Col. 12, lines 1-17, Col. 17, lines 45-67, and Col. 18, lines 1-67. Applicants disagree with this assertion because Cols. 11 and 12 describe a due diligence protocol using various models, and that each database model includes numerous fields for data, such as borrower financial statement data, principal amounts, interest rates, credit metrics, amortization tables, industry information and cash flow projections. Cols. 17 and 18 describe the different fields in the database models. Applicants submit that there is no teaching of automatically segmenting cash flow data by potential asset disposition types wherein each asset has a potential asset disposition type assigned thereto by Tilton at Cols. 11, 12, 17, and 18. Applicants submit that there is no description in Tilton of potential asset type assignments, and no description of segmented cash flows by potential asset disposition types.

Moreover, Tilton does not describe or suggest a method that includes *determining a cash flow timing and an expense timing for each asset included within the portfolios based on the potential asset disposition type assigned thereto*, determining cash flow projections for the deal based on the determination of cash flow timings and expense timings for each asset included within the portfolios, and *performing sensitivity analysis using a Monte Carlo Simulation Model to provide different scenarios based on a variety of assumptions retrieved from the database including expected timing of recoveries, amount of recoveries, interest rates, and expenses wherein the Simulation Model generates a probabilistic distribution of a possible value of the deal including risk associated with uncertainty of future events.* (Emphasis added.) The Office Action asserts, at page 4, that determining a cash flow timing and an expense timing for each asset included within the portfolios based on the potential asset disposition type assigned thereto is taught by Tilton at Col. 3, lines 59-67 and Col. 4, lines 1-10. Applicants disagree with this

assertion because Cols. 3 and 4 describe determining credit rating agency ratings using various parameters including cash flow modeling of the proposed transaction. Applicants submit that there is no description of assigned potential asset disposition type and no description of determining a cash flow timing and an expense timing for each asset included within the portfolios based on the potential asset disposition type assigned thereto.

Furthermore, Tilton does not describe or suggest a method that includes *exporting cash flow projections into a pre-determined format to develop financially attractive bids for the deal that takes into account a variety of foreseeable risks*. (Emphasis added.)

As stated above, Tilton does not describe or suggest each asset included within the portfolio having a potential asset disposition type assigned thereto. Accordingly, Tilton does not describe or teach determining a cash flow timing and an expense timing for each asset included within the portfolios based on the potential asset disposition type assigned thereto.

The Office Action acknowledges that Tilton does not teach “performing sensitivity analysis using a Monte Carlo Simulation Model to provide different scenarios based on a variety of assumptions retrieved from the database” However, the Office Action, at pages 4-5, asserts that “performing sensitivity analysis using a Monte Carlo Simulation Model to provide different scenarios based on a variety of assumptions retrieved from the database . . . is old and well known in the art because it can be used for example to test the outer limits of a project's viability Therefore it would have been obvious to one skilled in the art . . . to modify the teachings of Tilton to include performing a performing sensitivity analysis using a Monte Carlo Simulation Model to provide different scenarios based on a variety of assumptions retrieved from the database” Applicants traverse this assertion because there is no motivation to modify Tilton with a Monte Carlo Simulation Model.

Applicants submit that obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify Tilton with a Monte Carlo Simulation Model. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some

teaching, suggestion, or incentive supporting the combinations. Furthermore, in contrast to the assertion within the Office Action, Applicants respectfully submit that it would not be obvious to one skilled in the art to combine a Monte Carlo Simulation Model with Tilton because there is no motivation to combine the references suggested in the art. Rather, the Examiner has not pointed to any prior art that teaches or suggests to combine a Monte Carlo Simulation Model with Tilton, other than Applicants' own teaching. Only the conclusory statement that "it would have been obvious to one skilled in the art . . . to modify the teachings of Tilton to include performing a performing sensitivity analysis using a Monte Carlo Simulation Model to provide different scenarios based on a variety of assumptions retrieved from the database . . ." suggests combining a Monte Carlo Simulation Model with Tilton.

As is well established, the mere assertion that it would have been obvious to one of ordinary skill in the art to have modified Tilton to obtain the claimed recitations of the present invention does not support a *prima facie* obvious rejection. Rather, each allegation of what would have been an obvious matter of design choice must always be supported by citation to some reference work recognized as standard in the pertinent art and the Applicants given the opportunity to challenge the correctness of the assertion or the notoriety or repute of the cited reference. Applicants have not been provided with the citation to any reference supporting the combination made in the rejection. The rejection, therefore, fails to provide the Applicants with a fair opportunity to respond to the rejection, and fails to provide the Applicants with the opportunity to challenge the correctness of the rejection.

Further, as the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither suggestion nor motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Furthermore, combining a Monte Carlo Simulation Model with Tilton does not overcome the deficiencies in the teachings of Tilton described above. Therefore, a *prima facie* case of obviousness has not been established because Tilton modified with a Monte Carlo Simulation Model does not describe or suggest all the limitations of independent Claim 1.

Accordingly, Applicants respectfully submit that Claim 1 is patentable over Tilton.

For at least the reasons as set forth above, Applicants respectfully request that the 35 U.S.C. § 103(a) rejection of Claim 1 be withdrawn.

Claims 2-12 depend from independent Claim 1 which is submitted to be in condition for allowance. When the recitations of Claims 2-12 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 2-12 are also patentable over Tilton.

Claim 13 recites a system for managing portfolio cash valuation for analyzing a deal that includes a portfolio of distressed financial assets including loans or other financial instruments, the system includes at least one client system, at least one server system coupled to a database for storing data, and a network connecting the at least one client system to the server system, wherein the server system is configured to “generate a cash flow data table from various data sources, the data table including data relating to each asset included within the portfolios...import cash flow data from the data table into a cash flow model...automatically segment cash flow data by potential asset disposition types utilizing the cash flow model, each asset having a potential asset disposition type assigned thereto...determine a cash flow timing and an expense timing for each asset included within the portfolio based on the potential asset disposition type assigned thereto, the determination of the timings performed using the cash flow model...determine cash flow projections for the deal based on the determination of cash flow timings and expense timings for each asset included within the portfolio...perform a sensitivity analysis using a Monte Carlo Simulation Model to provide different scenarios based on a variety of assumptions retrieved from the database including expected timing of recoveries, amount of recoveries, interest rates, and expenses, the Simulation Model generates a probabilistic

distribution of a possible value of the deal including risk associated with uncertainty of future events...and export cash flow projections into a pre-determined format to develop financially attractive bids for the deal that takes into account a variety of foreseeable risks.”

Claim 13 recites a system comprising, among other things, at least one server configured to perform steps essentially similar to those recited in Claim 1. Thus, it is submitted that Claim 13 is patentable over Tilton for reasons that correspond to those given with respect to Claim 1.

For at least the reasons as set forth above, Applicants respectfully request that the 35 U.S.C. § 103(a) rejection of Claim 13 be withdrawn.

Claims 14-26 depend from independent Claim 13 which is submitted to be in condition for allowance. When the recitations of Claims 14-26 are considered in combination with the recitations of Claim 13, Applicants submit that dependent Claims 14-26 are also patentable over Tilton.

Claims 27-33 have been cancelled.

Claim 34 recites a computer program embodied on a computer readable medium for analyzing a deal that includes a portfolio of distressed financial assets including loans or other financial instruments, the computer program is capable of being processed by a server system coupled to a centralized interactive database and at least one client system, the computer program includes “a code segment that receives information from various data sources...a code segment that generates a cash flow data table from various data sources, the data table including data relating to each asset included within the portfolio...a code segment that imports cash flow data from the data table into a cash flow model...a code segment that automatically segments cash flow data by potential asset disposition types utilizing the cash flow model, each asset having a potential asset disposition type assigned thereto...a code segment that determines a cash flow timing and an expense timing for each asset included within the portfolio based on the potential asset disposition type assigned thereto, the determination of the timings performed using the cash flow model...a code segment that determines cash flow projections for the deal

based on the determination of cash flow timings and expense timings for each asset included within the portfolio...a code segment that performs sensitivity analysis using a Monte Carlo Simulation Model to provide different scenarios based on a variety of assumptions retrieved from the database including expected timing of recoveries, amount of recoveries, interest rates, and expenses, the Simulation Model generates a probabilistic distribution of a possible value of the deal including risk associated with uncertainty of future events...and a code segment that exports cash flow projections into a pre-determined format to develop financially attractive bids for the deal that takes into account a variety of foreseeable risks.”

Claim 34 recites a computer program that includes a code segment programmed to perform steps essentially similar to those recited in Claim 1. Thus, it is submitted that Claim 34 is patentable over Tilton for reasons that correspond to those given with respect to Claim 1.

For at least the reasons as set forth above, Applicants respectfully request that the 35 U.S.C. § 103(a) rejection of Claim 34 be withdrawn.

Claim 35 has been cancelled. Claims 36-43 depend from independent Claim 34 which is submitted to be in condition for allowance. When the recitations of Claims 36-43 are considered in combination with the recitations of Claim 34, Applicants submit that dependent Claims 36-43 are also patentable over Tilton.

Claim 44 recites a centralized database for analyzing a deal that includes a portfolio of distressed financial assets including loans or other financial instruments, the database includes “data corresponding to generating a cash flow data table from various data sources, the data table including data relating to each asset included within the portfolio...data corresponding to importing cash flow data from the data table into a cash flow model...data corresponding to automatically segmenting cash flow data by potential asset disposition types utilizing the cash flow model, each asset having a potential asset disposition type assigned thereto...data corresponding to determining a cash flow timing and an expense timing for each asset included within the portfolio based on the potential asset disposition type assigned thereto, the determination of the timings performed using the cash flow model...data corresponding to

determining cash flow projections for the deal based on the determination of cash flow timings and expense timings for each asset included within the portfolio...data corresponding to performing sensitivity analysis using a Monte Carlo Simulation Model to provide different scenarios based on a variety of assumptions retrieved from the database including expected timing of recoveries, amount of recoveries, interest rates, and expenses, the Simulation Model generates a probabilistic distribution of a possible value of the deal including risk associated with uncertainty of future events...and data corresponding to exporting cash flow projections into a pre-determined format to develop financially attractive bids for the deal that takes into account a variety of foreseeable risks.”

Claim 44 recites a centralized database that includes data corresponding to steps essentially similar to those recited in Claim 1. Thus, it is submitted that Claim 44 is patentable over Tilton for reasons that correspond to those given with respect to Claim 1.

For at least the reasons as set forth above, Applicants respectfully request that the 35 U.S.C. § 103(a) rejection of Claim 44 be withdrawn.

Claim 46 has been cancelled. Claims 45 and 47-50 depend from independent Claim 44 which is submitted to be in condition for allowance. When the recitations of Claims 45 and 47-50 are considered in combination with the recitations of Claim 44, Applicants submit that dependent Claims 45 and 47-50 are also patentable over Tilton.

Claims 51-56 have also been cancelled.

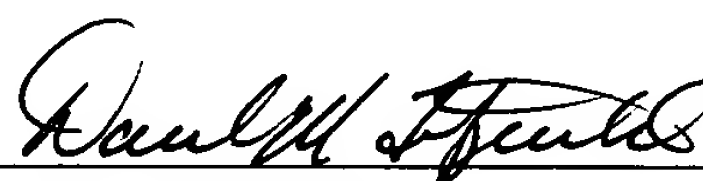
Claim 57 is an independent claim that recites a “computer for analyzing a deal that includes a portfolio of distressed financial assets including loans or other financial instruments...” The computer of Claim 57 is programmed to perform steps essentially similar to those recited in Claim 1. Thus, it is submitted that Claim 57 is patentable over Tilton for reasons that correspond to those given with respect to Claim 1.

For at least the reasons as set forth above, Applicants respectfully request that the 35 U.S.C. § 103(a) rejection of Claim 57 be withdrawn.

For at least the reasons set for above, Applicants respectfully request that the Section 103 rejection of Claims 1-57 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



Daniel M. Fitzgerald
Registration No. 38,880
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070